STATE OF MICHIGAN

COURT OF APPEALS

GREGORY GREEN, M.D., a/k/a DR. GREGORY GREEN and SHELLY GREEN, Plaintiffs/Counter-Defendants-Appellees,	UNPUBLISHED August 17, 2006
v	No. 259947 Muskegon Circuit Court
PHILLIP ALVESTEFFER and SHERYL ALVESTEFFER, Defendants/Counter-Plaintiffs-Appellants.	LC No. 03-042538-CH

Before: Zahra, P.J., and Neff and Owens, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's judgment for plaintiffs following a bench trial arising from a dispute over a 66-foot-wide parcel of property. We affirm.

Plaintiffs and defendants are adjoining landowners. Plaintiffs' property abuts defendants' property to the north. The disputed portion of land is a parcel 66 feet wide that is south of plaintiffs' property and running the length of the western border of defendants' property. In 2003, Porter Mulder Land Company granted plaintiffs an easement over the disputed parcel. Plaintiffs filed suit to enforce this easement. Defendants asserted the disputed parcel was conveyed to their predecessors in interest and, therefore, Porter Mulder no longer held legal interest in the property when it purported to grant the easement in 2003. Defendants' property was originally conveyed to defendants' predecessors in interest from Porter Mulder as two separate parcels. In 1949, Porter Mulder conveyed to Louis and Kathryn Eklund property that would become a portion of the land later acquired by defendants, described as:

> The West half of North quarter of South half of Northeast quarter of the Southwest quarter, Section Thirty-five (35), Town Eleven North, Range Sixteen West, containing 2 ½ acres more or less; *excepting and reserving the West 66 feet therefore for use of public for highway purposes*; subject to mining reservation made in deed recorded in Liber 468, Page 151, Muskegon County Records. [Emphasis added.]

In 1964, Porter Mulder transferred to Michigan Land and Mineral Company adjoining property that would comprise the remainder of the land later acquired by defendants, described as:

> West one-half (W 1/2) of the South quarter (S 1/4) of North one-half (N 1/2) of Northeast quarter (NE 1/4) of Southwest quarter (SW 1/4), Section Thirty-five (35), Town Eleven (11) North, Range Sixteen (16) West, *except the West 66 feet thereof for road purposes*. [Emphasis added.]

The trial court determined the emphasized language constituted exceptions to the conveyances, and Porter Mulder retained title in fee simple to the excepted portions. It granted plaintiffs judgment effectuating and enforcing Porter Mulder's 2003 grant of easement to them.

Defendants argue that the trial court erred in determining that Porter Mulder retained title to the disputed parcel.[1] We disagree.

The question presented is whether the emphasized language constitutes exceptions from the conveyances or attempted reservations for the benefit of strangers to those conveyances. Deeds are contracts. *Negaunee Iron Co v Iron Cliffs Co,* 134 Mich 264, 279; 96 NW 468 (1903). The interpretation of the language of a contract is an issue of law, which this Court reviews de novo. *Morley v Automobile Club of Michigan,* 458 Mich 459, 465; 581 NW2d 237 (1998). As our Supreme Court explained in *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc,* 472 Mich 359, 370; 699 NW2d 272 (2005):

> "(1) In construing a deed of conveyance[,] the first and fundamental inquiry must be the intent of the parties as expressed in the language thereof; (2) in arriving at the intent of the parties as expressed in the instrument, consideration must be given to the whole [of the deed] and to each and every part of it; (3) no language in the instrument may be needlessly rejected as meaningless, but, if possible, all the language of a deed must be harmonized and construed so as to make all of it meaningful; (4) the only purpose of rules of construction of conveyances is to enable the court to reach the probable intent of the parties when it is not otherwise ascertainable." [*Id.*, quoting *Purlo Corp v 3925 Woodward Avenue, Inc,* 341 Mich 483, 487-488; 67 NW2d 684 (1954).]

It is clear under Michigan law that "[a]n attempted reservation for the benefit of a stranger to the conveyance is ineffective." *Choals v Plummer,* 353 Mich 64, 71; 90 NW2d 851 (1958). However, a grantor may create an exception in favor of a third party. *Mott v Stanlake,* 63 Mich App 440, 442; 234 NW2d 667 (1975), citing *Martin v Cook,* 102 Mich 267; 60 NW 679 (1894). In the instant case, the emphasized language in one of the descriptions contains the language "*except* the West 66 feet thereof for road purposes," while the emphasized language in the other

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[1] Defendants also argue the trial court erred in implicitly concluding that the deeds at issue were unambiguous. However, defendants do not actually address the merits of this issue in their brief. When a party fails to brief the merits of an alleged error, the issue is considered abandoned. *Prince v MacDonald,* 237 Mich App 186, 197; 602 NW2d 834 (1999).

description contains the language "*excepting and reserving* the West 66 feet therefore for use of public for highway purposes." Nevertheless, "excepting" and "reserving" have often been used indiscriminately, and it is not the term used but the nature and effect of the provision that dictates whether the provision will be construed as an exception or a reservation. *Martin, supra* at 272. Although a reservation in favor of a third party is invalid, the reservation will be treated as excepting from a grant the thing reserved in order to give effect to a grantor's intent. *Id.*

In *Peck v McClelland*, 247 Mich 369, 371; 225 NW 514 (1929), quoting *Neguanee Iron, supra* at 264, our Supreme Court noted that "[w]hatever is excluded from the grant by exception remains in the grantor as of his former title or right."

> "If the grantor, no matter what the words may be, retains in himself title to a part of the land described in the deed, it is an exception. In such case words of inheritance are not necessary to retain in him the title for himself and his heirs. This is reasonable, because the deed did not purport to convey the title to the part excepted, nor to divest him of it. . . .
>
> By the deeds here involved, there is an exception of the 14-foot strip. It is not conveyed by the grantor to the grantee in any deed. . . .
>
> "A grantor who states in his deed that he excepts a certain portion of the land because he wants it for a certain purpose cannot be held to have conveyed that which he has expressly excluded because he afterwards devotes it to a different purpose." [*Peck, supra* at 371 (citations omitted).]

Similarly, in *Thomas v Jewell*, 300 Mich 556, 558, 561; 2 NW2d 501 (1942), the Court determined that language in a deed conveying certain premises "except 10 rods square lying in the northeast corner," expressly and unambiguously excepted that portion of the property from the conveyance, so that the grantor retained title. In the instant case, too, the language in the deeds expressly and unambiguously excepts the west 66 feet of the described parcels from conveyance, and Porter Mulder retained title to that portion of the parcels.

Defendants argue that the decisions in *Bolio v Marvin*, 130 Mich 82; 89 NW 563 (1902), *Heethuis v Kerr*, 194 Mich 689; 161 NW 910 (1917), and *Choals, supra*, compel a different conclusion. We disagree.

In *Bolio, supra* at 82-83, the Court determined that language in a deed conveying 30 acres "[s]aving and preserving, however, from the operation hereof, the road running along the southerly line of said parcels" constituted reservation of a right to use the road and not an exception to the conveyance. The Court distinguished that language from that at issue in *Reynolds v Gaertner*, 117 Mich 532; 76 NW 3 (1898). In *Reynolds*, the deed included the phrase "except two and forty-six hundredths acres to the Chicago & Canada Southern Railroad," which the *Bolio* Court, like the *Reynolds* Court, observed "plainly imported an exception" of 2.46 acres from the conveyance. *Id.* at 83-84. Like the language at issue in *Reynolds*, the language here explicitly excepts the west 66-feet of land from the parcel conveyed. It "plainly import[s] an exception" of that property from the conveyance.

In *Heethuis, supra* at 696, the Court was asked to quiet title to property purchased at a tax sale. The defendants argued that title could not be quieted in plaintiffs because no notice of right to redeem was served on a grantor who had reserved 12 feet in the rear of the lot for a public alley. *Id.* at 693. In that context, and given the fact that the deed was not in the record, the Court determined that the reservation language conveyed title to the grantee. *Id.* at 695-696. In *Choals, supra* at 67, 69, the Court determined that language "reserving from the above description the north 33 feet and the south 33 feet for highway purposes only" was an attempt to create an easement for either public or private use and did not create an exception to the property described as conveyed to the grantee. However, the issue in *Choals, supra* was whether the grantor intended to reserve an easement for the benefit of the grantor's contiguous property or whether the language was an offer to dedicate a right-of-way, which was never accepted. *Id.* at 68-70. Hence, both *Heethuis* and *Choals* are distinguishable from the instant case.

This result is not affected simply because Porter Mulder indicated that the property was being excepted for use as a road or highway, but thereafter was not put to such use. *Peck, supra* at 371. "A grantor who states in his deed that he excepts a certain portion of the land because he wants it for a certain purpose cannot be held to have conveyed that which he has expressly excluded because he afterwards devotes it to a different purpose." *Id.* Thus, the fact that Porter Mulder excepted the west 66 feet of the parcels from the conveyances for road or highway purposes has no legal effect on the validity of the exception. The trial court correctly concluded that the language employed in the 1949 and 1964 deeds from Porter Mulder constituted a valid exception of the disputed 66-foot parcels from conveyance, regardless whether the parcels were subsequently used as a roadway. *Id.*

Defendants next argue the trial court's findings of fact were insufficient because the trial court did not make specific findings regarding Porter Mulder's intent at the time it executed the deeds conveying the parcels in 1949 and 1964. A trial court sitting without a jury must make specific findings of fact, state its conclusions of law separately, and direct entry of the appropriate judgment. MCR 2.517(A)(1). A trial court's findings of fact are sufficient if they are "[b]rief, definite, and pertinent," if it appears the court was aware of the issues and correctly applied the law, and if appellate review would not be aided by further explanation. MCR 2.517(A)(2); *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176-177; 530 NW2d 772 (1995). The trial court considered the pertinent language at issue and correctly analyzed the legal effect of that language, specifically concluding that Porter Mulder excepted the disputed strip of land from conveyance. The trial court's findings indicate it was aware of the issues and correctly applied the law. No further explanation was necessary to apprise the parties of the basis of its decision, nor to aid appellate review. Therefore, the trial court's findings of fact were sufficient.

Because Porter Mulder retained title in fee simple to the disputed parcel of property, the trial court properly determined that the 2003 easement was valid and enforceable.[2]

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[2] Defendants do not argue that the 2003 easement from Porter Mulder to plaintiffs is otherwise invalid or improper, only that Porter Mulder lacked any interest in the property at the time it
(continued…)

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Donald S. Owens

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purported to grant the easement.